

Exhibit 74

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
50 California Street • Suite 2800 • San Francisco, California 94111 • (415) 382-3600 • FAX: (415) 382-3606 • www.bcdc.ca.gov**Agenda Item #9**

August 7, 2003

TO: Commissioners and Alternates
FROM: Will Travis, Executive Director (415/352-3653 travis@bcdcc.ca.gov)
Andrea M. Gaut, Coastal Program Analyst (415/352-3618 andreag@bcdcc.ca.gov)
SUBJECT: Revisions to the Staff Recommendation on BCDG Permit Application No. 2-02; Mark Sanders; Westpoint Marina, City of Redwood City, San Mateo County
(For Commission consideration on August 7, 2003)

Proposed Additions and Corrections

The following revisions should be incorporated in the staff recommendation for Permit Application No. 2-02, Westpoint Marina. Additions to the staff recommendation are underlined and the deletions are struck through.

On page 8, Special Condition II-B-5 entitled "Maintenance," the first sentence should be revised as follows:

The areas and improvements within the total ~~350,000~~ 298,000-square-foot area (plus any additional access area provided with development of the commercial buildings) shall be permanently maintained....

On page 11, Special Condition II-H, should be revised to read as follows:

H. "No Wake" Zone in Westpoint Slough. The permittee shall install and maintain buoys adjacent to the navigation channel of Westpoint Slough to identify the "No Wake" speed zone, delineate the center of the channel for adequate draw, and discourage boats from deviating out of the navigable channel. The permittee shall also install and permanently maintain a buoy system 100 feet from the salt marsh on Greco Island along the Westpoint Slough up to its confluence with ~~and~~ Redwood Creek. The buoys shall contain signs informing the public that public access into the marshlands of the San Francisco Bay National Wildlife Refuge is prohibited. The permittee shall coordinate with the San Francisco Bay National Wildlife Refuge on specific wording and locations of buoys.



On page 18, the following paragraph should be revised to read as follows:

Salt pond policy number three states that salt ponds that have especially high wildlife values should be preserved or given priority for potential purchase and preservation. The U. S. Fish and Wildlife Service (FWS) and California Department of Fish and Game (DF&G) were contacted by staff regarding the potential wildlife value of the project site. DF&G stated that there was very little data on bird use of the Redwood City salt ponds because the ponds have not been made available to DF&G or FWS by Cargill for surveys. The permittee, however, has conducted two biological studies of the site. DF&G added that bittern ponds tend to be less valuable to wildlife because of the presence of high salinity. When bittern ponds dry out, however, they can provide habitat for the endangered snowy plover. The FWS noted in an October 22, 2002 letter that similar to DF&G, it was not sure of the value of the project site because surveys have not been conducted at this location. However, the FWS has noted that on the occasions when the bittern pond was partially dry or dry, shorebirds were observed resting at the site, although there is no feeding nor nesting on the dried bittern.

On page 19, the following paragraph should be revised to read as follows:

The Commission finds that the proposed project is consistent with the McAteer-Petris Act and the San Francisco Bay Plan policies on salt ponds and other managed wetlands. Specifically, the Commission finds that the integrity of the salt pond production system is maintained because development of the project site does not impact the salt pond production capability due to improved salt pond production methods. In addition, the Commission finds that the project will create a 26.6-acre water basin and that the pile-supported and floating fill that will be placed in the basin cannot be considered open water. Therefore, approximately 40 percent of the water basin is returned to open water because it is not covered with marina facilities. Special Condition II-CC requires the permittee to maintain, as unfilled, approximately 447,077 square feet of marina basin. This special condition allows in-kind repairs to the pile-supported and floating fill, as well as the shoreline protection, authorized herein, but allows only minor additional fill for marina and public access uses in the future by permit amendment. The Commission does not make a finding regarding whether the boat slips, fairways, or other heavily used water areas constitute open water. However, the Commission finds that the site now provides little habitat value and as required in Special Conditions II-F through II-K, any impacts to habitat will be mitigated. In addition, this marina provides for needed water-related recreational uses and other public trust benefits that enable the Commission to determine that for this project, at this location, substantial open water is

On page 16, Special Condition II-CC, should be added, as shown below:

CC. Open Space. Prior to the commencement of any construction authorized herein, the permittee shall permanently restrict as open space, to remain unfilled except as provided herein, approximately 447,077 square feet of marina basin. Within this basin, the permittee is authorized to place approximately 100,000 square feet of floating and pile-supported fill for docks, boardwalks, pilings, covered berths, boat launch ramp, and boat-haul out area and approximately 96,500 square feet of riprap below mean high water. In-kind repairs as authorized herein to the pile-supported and floating marina facilities and public boardwalk, the reconfiguration of the pile-supported and floating marina facilities, some minor additions to the pile-supported and floating marina facilities, and periodic repairs to the shoreline protection authorized herein may be performed within the basin through plan review or amendment of the authorization herein. However, the open water areas of the basin shall be as contiguous as possible. Minor amounts of floating and pile-supported fill, in addition to that authorized herein may be added to the basin through amendment of this permit to improve the water-related recreational marina and public access uses.

The permittee shall comply with this condition by doing the following: the permittee shall submit to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form suitable for recording in San Mateo County.

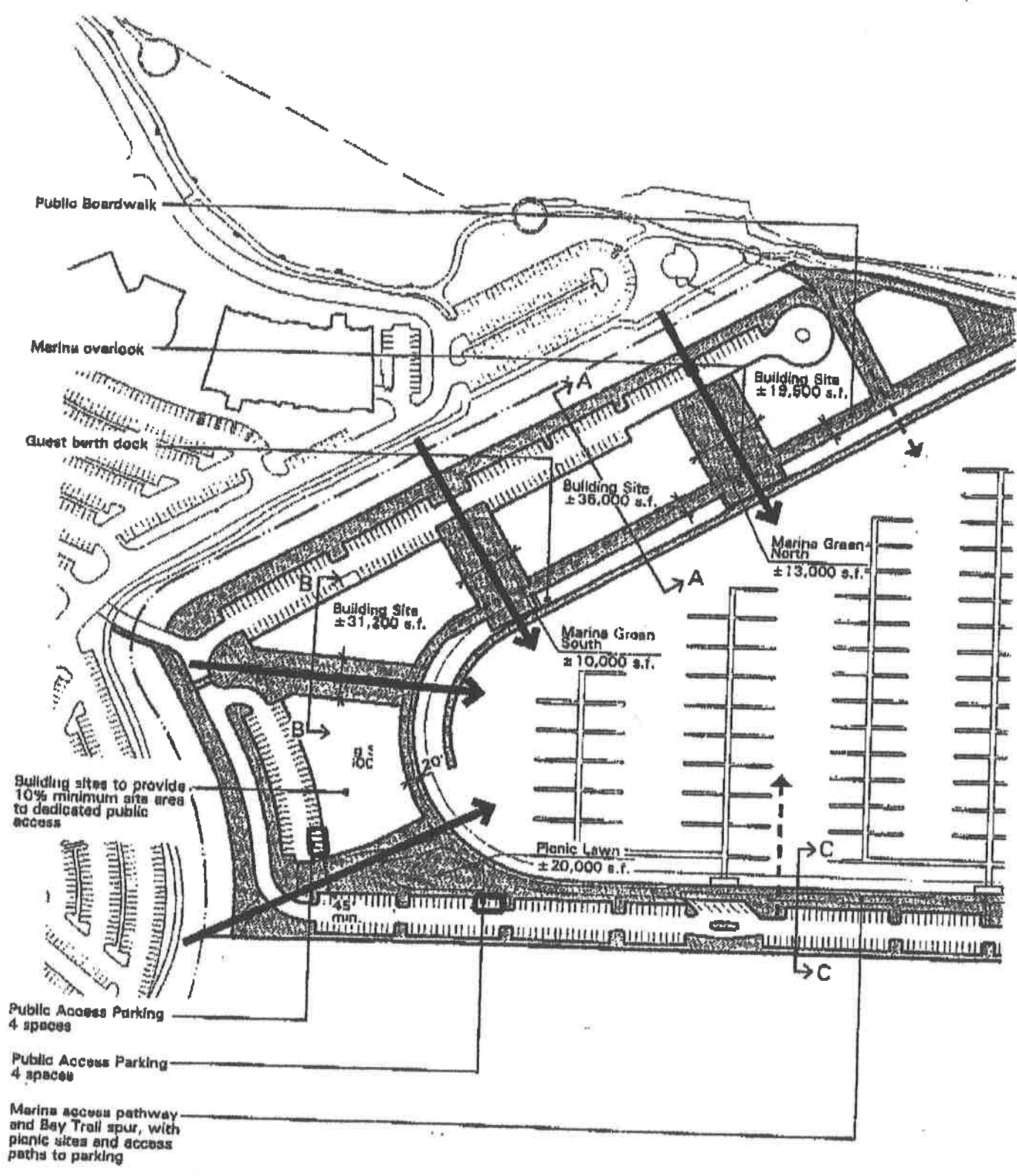
The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, the permittee shall record the instrument on all parcels affected by the instrument within 30 days of its approval and shall thereafter provide the Commission with a copy of the recorded instrument. If the Executive Director disapproves the instrument, the permittee shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and the permittee shall record the approved instrument on all parcels affected by the instrument within 30 days of its approval.

provided: Finally, the Commission finds that the commercial and retail uses that will be constructed on the upland portion of the project site are incidental to the water-related recreational uses the marina will provide.

On page 26, Finding III-G, should be replaced with the following language:

G. **Commission Jurisdiction.** Government Code Section 66610(c) defines the Commission's salt pond jurisdiction as "...all areas which have been diked off from the bay and have been used during the three years immediately preceding the effective date of the amendment of this section during the 1969 Regular Session of the Legislature for the solar evaporation of bay water in the course of salt production." The parcel that is the subject of this permit satisfies those criteria and therefore ~~is and~~ will continue to be within the Commission's salt pond jurisdiction. Commission Regulation Section 10710 supports this conclusion; it states that areas once subject to Commission jurisdiction remain subject to that same jurisdiction even if filled or otherwise artificially altered. Further, Government Code Section 66610(a) defines the Commission's "Bay" jurisdiction as "...all areas that are subject to tidal action...." The project will result in breaching a portion of the salt pond levee and opening of the marina basin to tidal waters and therefore will extend the Commission's "Bay" jurisdiction inland to Mean High Tide or, in areas containing tidal marsh, to five feet above Mean Sea Level.

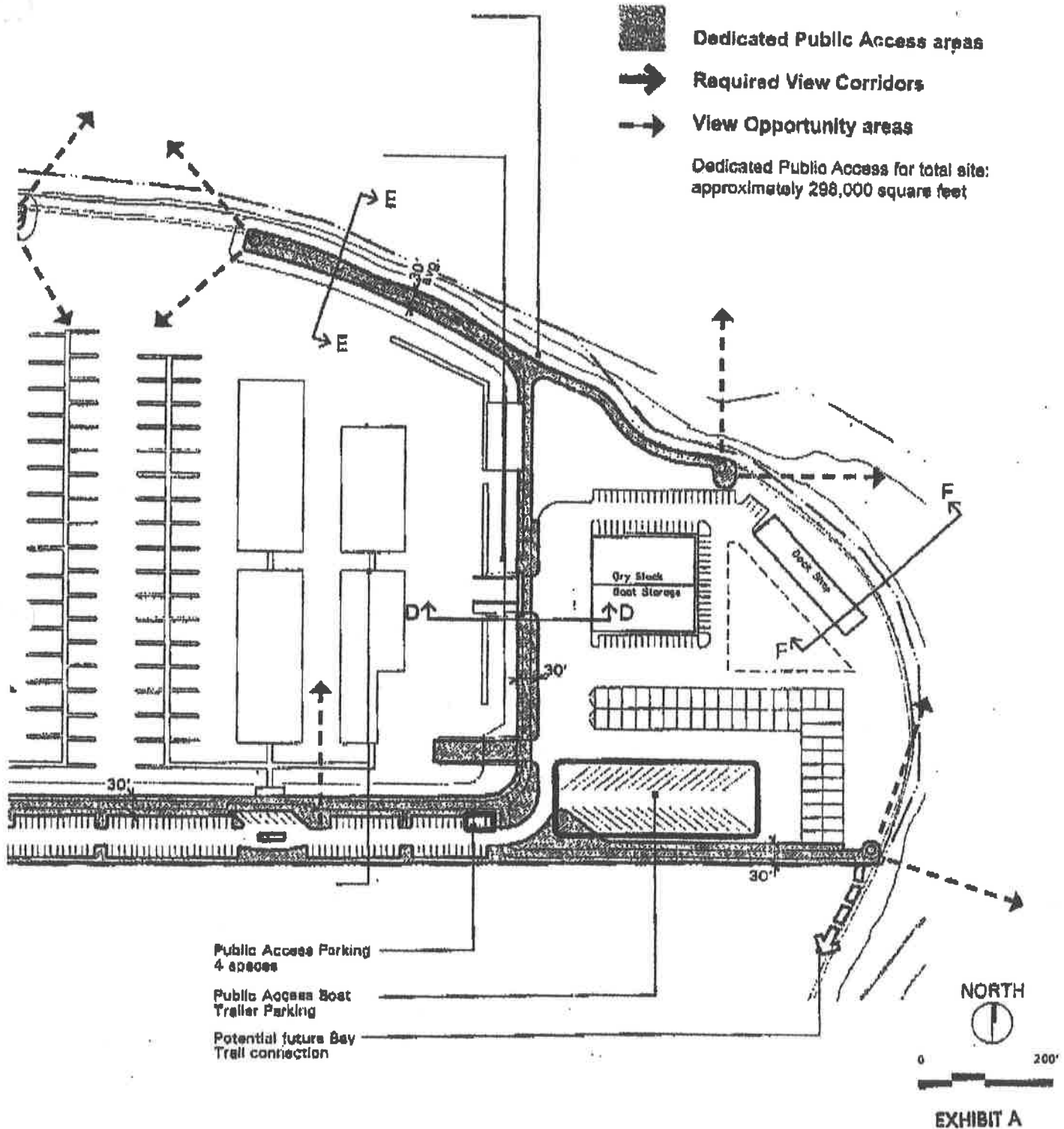
, the Commission believes, it



Westpoint Marina and Boatyard

Redwood City, California
27 June 2003

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